

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

In Re:

BK05-30027
Chapter 11

SI TANKA UNIVERSITY

Debtor.

SI TANKA UNIVERSITY,

ADV05-3003

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
EDUCATION,

**STIPULATED FACTS REGARDING
PLAINTIFF'S APPLICATION FOR
PRELIMINARY INJUNCTION**

Defendant.

On May 5, 2005, Si Tanka University ("Si Tanka"), filed a complaint seeking injunctive and declaratory relief pursuant to 11 U.S.C. § 525. On the same date, Si Tanka filed an application for preliminary injunction. The application seeks to prohibit the United States, on behalf of the Department of Education [DOE], from revoking Debtor's rights to participate in certain federal institutional grant programs and student loan and grant programs. The United States, by and through Stephanie C. Bengford, Assistant United States Attorney, its counsel of record, and Si Tanka, by and through Clair Gerry, counsel for Si Tanka, do not believe that the facts at issue are contested for the preliminary injunction. Accordingly, the undersigned on behalf of the United

States and Si Tanka, stipulate to the following facts:

1. Attached as Exhibit 1 is the Notice which Si Tanka received from the DOE. The Notice was sent certified mail return receipt requested to the attention of Francine Hall, President of Si Tanka University, on or about April 25, 2005.
2. Exhibit 1 represents a true and accurate copy of the Notice which was sent by DOE.
3. Prior to the Notice (which is attached as Exhibit 1) being sent to Si Tanka, Si Tanka was eligible to receive federal student financial aid funding from the United States Department of Education, pursuant to Title IV of the Higher Education Act of 1965, 20 U.S.C. §1001, et seq. and 42 U.S.C. §2751, et seq.
4. On July 26, 2002, DOE entered into a Program Participation Agreement [PPA], see Exhibit 2, where Si Tanka was given provisional approval to participate in the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965.
5. Provisional approval to participate in the programs authorized by Title IV made students at Si Tanka eligible for the following student aid: Federal Pell Grant Program, Federal Family Education Loan Program, Federal Perkins Loan Program, Federal Supplemental Educational Opportunity Grant Program, and Federal Work-Study Program.
6. The Federal Family Education Loan Program includes the Federal Stafford Loan Program (which includes both subsidized and unsubsidized loans), the Federal PLUS Loan Program and the Federal Consolidation Loan Program. See 34 C.F.R. §682.100 (the Federal SLS Program which is also mentioned in this regulation ended July 1, 1994). The Federal Perkins Loan Program, the Federal Work-Study Program and the Federal Supplemental Educational Opportunity

Program are collectively referred to as the Federal Campus-based programs. See 34 C.F.R. §668.2(b).

7. The Notice dated on or about April 25, 2005, applies to only Title IV student financial aid. The Notice dated April 25, 2005, see Exhibit 1, does not include Title III funding.

8. Title IV does not include the institutional grant programs which are listed at ¶10 of Plaintiff's Complaint.

9. The grants under the Strengthening Institutions program (referred to in the Complaint as the Tribally Controlled Colleges and Universities grant), the Student Support Services grant program, and the Minority Science and Engineering Improvement Program are made under Title III of the Higher Education Act [HEA]. Those are all administered by the Office of Postsecondary Education. The Native American Vocational/Technical Education Program is made pursuant to Section 116 of the Carl D. Perkins Act (20 U.S.C. §2326) and is administered by the DOE's Office of Vocational and Adult Education. The aforementioned four grants are the only DOE-grants which Plaintiff was awarded prior to filing bankruptcy.

10. Plaintiff's Title III funding is not frozen. The Native American Vocational/Technical Education Program funding is not frozen. Upon the presentation of documentation to the DOE justifying that any expenses to be incurred or expenses for which Si Tanka seeks reimbursement are legitimate expenses of the awarded grant, the funds which Si Tanka justifies will be used for a legitimate grant purpose will be turned over to Si Tanka. 34 C.F.R. §74.22. Si Tanka's use of Title III funding as well as the Native American Vocational/Technical Education Program funding is permitted as long as Si Tanka maintains compliance with the provisions of the grants/programs. Si

Tanka's use of Title III funding as while as the Native American Vocational/Technical Education Program funding is limited to the amount of funding which was awarded in the applicable grant subject to the grant being renewed pursuant to applicable statutes and regulations.

11. On or about March 31, 2005, the DOE sent Si Tanka notice that as to Title IV Program Si Tanka would be required to pay pursuant to the reimbursement method of payment. See Exhibit 3.

12. Attached as Exhibit 4 is a copy of Si Tanka's summer schedule for sessions 1 and 2.

13. Attached as Exhibit 5 is an unsigned Declaration of Francine Hall. Upon the original declaration being supplemented to the Court at the argument set by the Court in this matter, the undersigned partes have agreed to incorporate into the stipulated facts the signed declaration of Francine Hall.

14. The undersigned parties submit the above-entitled stipulated facts for the purpose of the Court resolving the legal issues associated with Plaintiff's application for a preliminary injunction. The parties will be prepared to make legal arguments in support of their position should the Court wish to hear legal arguments on the issues.

Date: May 11, 2005

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